



## LAPORTE COUNTY BOARD OF ZONING APPEALS

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**ANNEMARIE POLAN**  
Building Commissioner

April 15, 2014

Dear Members:

The regular meeting of the La Porte County Board of Zoning Appeals was held Tuesday, April 15, 2014, at 6:00 p.m. in the Assembly Room of the County Complex.

MEMBERS PRESENT:      Glen Minich              Wally Pritz  
                                 Candice Nelson          Melissa Mullins Mischke  
                                 Dwayne Hogan

OTHERS PRESENT:      Annemarie Polan, Recording Secretary, Attorney Doug Biege and  
Darlene Pavey, Secretary

Pledge of Allegiance.

Dwayne Hogan asked for a Motion for approval of the meeting minutes from March 18, 2014.

Melissa Mullins Mischke made Motion to approve the meeting minutes as presented.  
Candice Nelson seconded.

Dwayne Hogan asked if there are any questions, comments, or concerns.

All approved. Motion carried 5-0.

- 1. The Petition for Thomas A. Cullen** to construct a detached garage on a corner lot with less than the required setbacks from front, side and rear. This property is located at 7691 N. South Bend Blvd., New Carlisle, Hudson Twp., zoned R1B. (Postponed from the March 18, 2014 meeting to April 15, 2014 at 6:00 p.m.)

Dwayne Hogan said he would like a Motion to take this off the table.

Candice Nelson made a Motion that we take the Petition for Thomas A. Cullen off the table.  
Melissa Mullins Mischke seconded.

Dwayne Hogan asked if there are any questions.

All approved. Motion carried 5-0.

4-15-2014 BZA Minutes

Attorney Biege said that legal is adequate.

Dwayne Hogan asked for name and address for the record.

Thomas A. Cullen, Jr., 7691 N. South Bend Blvd., New Carlisle, Indiana 46552

Dwayne Hogan asked Mr. Cullen what he would like to do this evening.

Mr. Cullen said what he would like to do is ask permission for a variance exception in order to build an attached garage to his house. Mr. Cullen said that the reason he wants to attach this garage is because if he detached it six (6') feet from the house, he found out later that it needed to be ten (10') feet and would cut his room less.

Mr. Cullen said that the reason he needs the variance is because the placement of his septic tanks are on the side of the house by his service door so he has to kick the garage back towards the Nipsco property.

Mr. Cullen said that Nipsco came out and pretty much said do what I want because it would be two (2') to three (3') feet from their property line.

Dwayne Hogan asked the size of this addition.

Mr. Cullen said that it will be twenty-four by thirty – (maximum).

Mr. Cullen is up at the bench going over the site plan with the Board members.

Melissa Mullins Mischke asked Mr. Cullen how many feet are between the proposed garage and your actual property line.

Mr. Cullen said two (2') to three (3') feet.

Board members speaking with Mr. Cullen at the bench.

Attorney Biege asked Mr. Cullen if this is going to be attached.

Mr. Cullen stated yes.

Attorney Biege said that the setback requirements are if it's attached your rear yard setbacks are twenty-five (25') feet; if it's detached in R1B it's three (3') feet. Attorney Biege said that it will be for a detached building on the rear. Attorney Biege said that if he didn't attach it he could still do three (3') feet as a matter of right.

Mr. Cullen said that would be closer to South Bend Blvd, and the twenty-eight (28') feet would now become eighteen (18') feet.

Annemarie Polan, Building Commissioner, said that in R1A and R1B it is supposed to be ten (10') feet behind the house. Annemarie said that the way the land is situated, it is difficult for him to have it. Annemarie said that so long as he can safely pull out -- and you're asking if that was one-hundred (100%) percent correct -- she couldn't answer that.

Board members speaking amongst themselves.

Wally Pritz asked Mr. Cullen if he could move that garage five (5') feet towards Tulip.

Mr. Cullen stated no -- the septic system is located there. Mr. Cullen said that Nispco wanted Eight—hundred (\$800.00) dollars to show up and and eighty (inaudible) foot to move the line.

Board members speaking amongst themselves.

Dwayne Hogan asked if there are any remonstrators here this evening for Petition No. 1, for or against.

Attorney Biege said that if the Board makes a Motion he thinks that it's going to be difficult to specify as to what we're granting.

Attorney Biege said that if the Board chooses to grant this, the safest thing to do would be to be to grant it and allow the minimum setback requirements on the rear on Tulip -- that gives him (inaudible) in which he can build. Attorney Biege said that he thinks that would be the easiest way to draft this so it would be intelligible later.

Glen Minich asked if that is the minimum setback for a detached, even though we're going to grant it as an attached.

Attorney Biege said right. Attorney Biege said that the Board can tell him what they're going to grant as far as a setback.

Board members speaking amongst themselves.

Attorney Biege said that actually they approved his request for a proposed garage addition. Attorney Biege said that is what the e-mail says.

Dwayne Hogan asked if that was a local guy.

Mr. Cullen said that he just came up and said he was from Nipsco.

Attorney Biege said that he has the e-mail from Nipsco and it references an attachment --

Mr. Cullen said that he sent them the paper to be signed by them and then he got a call from a Jan –

Attorney Biege said wait a minute – it's a simple question. Do you have the attachment to the e-mail that you gave me – that's what he's looking for.

Mr. Cullen said that he doesn't think that he printed that out – he thinks that he asked for the original.

Attorney Biege asked if this is it.

Mr. Cullen stated yes.

Attorney Biege said that Nipsco e-mailed a consent and looking at the attachment -- although there is no dimensions or feet listed in the attachment, it's right on the line – it's obvious that Nipsco knows and it appears that they consent.

Board members speaking amongst themselves.

Glen Minich said that he would like to make a Motion that the Petition for Thomas A. Cullen to construct an attached garage on the corner lot with less than the required setbacks from rear and side, specifying the rear setback at three (3') feet to the Nipsco property and according to the drawing twenty-five (25') foot side setback. This property is located at 7691 N. South Bend Blvd., New Carlisle, Hudson Twp., zoned R1B.

Mr. Cullen said that he needs it to be twenty-three (23) feet.

Glen Minich said twenty-three (23') feet for the side.

Dwayne Hogan asked if he could have a second.

Melissa Mullins Mischke seconded.

Dwayne Hogan asked if there are any questions, comments, or concerns.

All approved. Motion carried 5-0.

Attorney Biege said just to confirm – with the side back changes, are you still at twenty feet by thirty on the garage.

Mr. Cullen stated yes.

## **2. The Petition for Jerome G. Jozwiak & Rose E. Jozwiak to split their 14.793**

acre parcel into two parcels. One parcel containing the house with one-hundred fifty foot road frontage and less than one acre and the remaining parcel (thirteen plus acres), having only fifty foot road frontage. This property is located at 7633 N. 500 E., Rolling Prairie, Galena Twp., zoned Agricultural.

Attorney Biege said that publication is adequate – there was certified mail served service except for the following: There was an attempt and a receipt to an attempt to Raymond Andresen; there is no authorized recipient when they attempted. Attorney Biege said that we have attempts on Jones, Mia Brewer, and Wayne Brewer, however no return receipt, however there is a receipt for attempt.

Dwayne Hogan asked if everything else is alright.

Attorney Biege stated yes.

Dwayne Hogan asked for name and address for the record.

Andrew Voeltz said he represents Jerome G. & Rose E. Jozwiak, who are petitioning for a variance to spit their 14.793 acre parcel into two parcels. Attorney Voeltz said that the address is 7633 N. 500 E., Rolling Prairie, Indiana.

Dwayne Hogan asked attorney Voeltz how he would like to split this.

Attorney Voeltz said that according to the diagrams that have been provided to the Board, this spilt would occur between two parcels, the one parcel would be a little bit less than one (1) acre, (.979) acres to be exact, which would include the house and the barn. Attorney Voeltz said that the remaining acreage of just under thirteen (13) acres, would then be maintained as tillable and/or farm land with an access to be granted by the fifty (50') foot frontage that is on the road side at N. 500 E.

Melissa Mullins Mischke said that it looks like there is a barn on the fifty (50') foot. Melissa asked attorney Voeltz if it is their intention to keep that structure.

Attorney Voeltz stated no. Attorney Voeltz said that there is no intention to keep that structure. Attorney Voeltz said that the problem his clients have encountered here is that this property has been for sale for quite some time and the issue is with the listing price of Two-Hundred Thousand Dollars, they're having a very very limited market to whom they could sell it to.

Attorney Voeltz said that the number of realtors that have approached his clients have indicated that if the parcel was split, meaning moving it all the way down to the homestead, meeting the .979 acres, that would be a much more saleable property and the fifty (50') foot frontage

would allow them access to the tillable acreage behind to allow that either to be leased out, or sold directly to another farmer making this much more desirable as far as the property would go, creating two parcels out of one.

Melissa Mullins Mischke said so that structure that is located in the fifty (50') feet would be removed.

Attorney Voeltz stated yes. Attorney Voeltz said that based on the drawing that he's looking at, it's just on the north side of the line and it would be demolished – destroyed – torn down, then to allow for access to that rear acreage, which would amount to some where less than thirteen (13) acres.

Attorney Voeltz said that the reason for the lines drawn the way they have been drawn, is just for that reason, to allow access by a frontage as opposed to having to petition for an easement to access that tillable acreage behind.

Board members speaking amongst themselves.

Attorney Voeltz said just for clarification for the Board, there is a septic located just north of the current driveway; that is the reason why the line was indicated where it was. Attorney Voeltz said that the line was approximately twenty-five (25') feet off of the septic, which would then bisect that structure that is located just to the north of the division line.

Dwayne Hogan asked Attorney Voeltz what is the advantage of splitting.

Attorney Voeltz said that the advantage of splitting that is his clients have discussed with a surveyor in regards to allowing access to that rear acreage, being the tillable acreage as opposed to again as he's mentioned, going the easement route. Attorney Voeltz said that if you split the acreage – or split the parcel in the manner that his client suggests, the fifty (50') foot frontage located on North 500 E. would then allow for direct access as opposed to having to grant an easement, or something to that affect in order to access that acreage behind.

Glen Minich said that the one thing that the Board may be inclined to do if we would possibly do this, we would probably have to talk about specifying that it would create a non-buildable lot in the back. Glen said that he thinks that is important if you're going to try to market the land.

Attorney Voeltz said that it's not his client's intention by any means or any way, shape, or form to turn this into a subdivision where there is going to be development. Attorney Voeltz said that this would simply allow them to sell the property with the house that is located on it right now, but then this property would have direct access from the road for any potential tenant or lessee for the farm property or tillable acres in the back. Attorney Voeltz said that is one of those things that are very attractive to a potential tenant that they don't have to worry about easements and dealing with current property owners, or changing the property owners;

they have direct access to that land that goes with the land in perpetuity.

Wally Pritz said that he doesn't see a difference between an easement and actually dividing this.

Attorney Voeltz said again, he goes back to the fact that his clients – it would be in their best interest to be able to split the parcel so to reduce the acreage to where the homestead and the barn on that .979 acres would then be marketable to sell to someone who is unable to afford the two-hundred plus thousand dollars for the entire property and then you wind up having a situation where that could be sold immediately, and then now you're looking for a potential client for the tillable acreage in the back.

Attorney Biege that this question came before him and his recommendation was to go with road frontage rather than easement because we would essentially create a completely land locked parcel with an easement. Attorney Biege said that you do have ownership with road frontage over an easement.

Dwayne Hogan asked if there are any remonstrators here this evening for this Petition.

Dwayne Hogan asked for name and address for the record.

**Remonstrator:**

Joyce Jarka, 5202 E Miami Trail, Rolling Prairie. Ms. Jarka said that the back of their property is right against the tillable land. Ms. Jarka said that it is her understanding that this land is going to remain tillable and it will never be built on. Ms. Jarka said that when they first got the letter they kind of thought that somebody was going to build back there.

Dwayne Hogan said subdivide. Dwayne said that is exactly what it looked like.

Ms. Jarka said that is what they thought it was and that is why they came. Ms. Jarka said that if it's just going to be tillable they don't have any objections as far as easement, or whether you divide it. Ms. Jarka said that really doesn't pertain to them because that is off of 500.

Melissa Mullins Mischke said that if we were to approve this, it would stay tillable and there would be no building back there at all allowed. Melissa said no subdivision – no additional homes.

Ms. Jarka said that she doesn't think that they have any objections.

Ms. Jarka is up at the bench going over the site plan with the Board members.

Dwayne Hogan asked if there are any other remonstrators here this evening for or against.



Attorney Biege said that he thinks that the Board is within its authority – and he thinks that it is consistent with past boards' decisions. Attorney Biege said that if you put a restriction as to no construction – no subdivision on the farm lot and it remains that way, he thinks that is the best use of both properties. Attorney Biege said that when we have these individuals come before the Board it's all fact sensitive and the shape and nature of this parcel he certainly thinks it's the Board decision if it goes that way.

Wally Pritz said that when you look at Miami Trail there is a possibility that someone could purchase a piece of property on the end and eventually want to subdivide this.

Melissa Mullins Mischke said that if we make the Motion that this one has no further subdividing and –

Annemarie Polan, Building Commissioner, said that it would be recorded with the deed.

Attorney Biege said that he will record the Findings of Fact and Conclusion of Law. Attorney Biege said hypothetically if a future purchaser were to buy this parcel and gain access by Miami Trail it changes the facts and they can certainly come before Board or Plan Commission and make a different request.

Board members speaking amongst themselves.

Attorney Voeltz told Attorney Biege that the acreage in the back would be 13.814. Attorney Voeltz said that would be the remaining and the portion in the front would be .979 for a total of 14.793.

Dwayne Hogan asked if there are any other questions, comments, or concerns from the Board.

Melissa Mullins Mischke made a Motion that the Petition for Jerome G. & Rose E. Jozwiak to split their 14.793 acre parcel into two parcels be granted, with one parcel containing the house with one-hundred fifty (150') foot road frontage and .979 acres and the remaining parcel with fifty (50') feet of road frontage – 13.814 acres and the 13.814 acre parcel cannot be further subdivided and no construction on that parcel and that the existing structure within that fifty (50') foot is removed and demolished within one (1) year.

Dwayne Hogan asked if he could have a second.

Glen Minich and Candice Nelson seconded.

Dwayne Hogan asked if there are any questions or concerns with this.

Wally Pritz said that on this one tract acreage, if someone wanted to put up a shed for leaving a tractor, or something, would they be allowed to do that.



Annemarie Polan, Building Commissioner, said that in your Motion there is no construction so we would have to discuss that right now.

Attorney Biege said that the way the Motion was phrased it would preclude any construction of any structure.

Glen Minich said that he thinks that is fine because we're just giving access for farming, we're not building buildings back there because otherwise all the remonstrators should have known that.

Attorney Voeltz said that with the Board's Motion any type of structure whether it would be for a carport, or garage, or some type of vehicle shed obviously it would be a re-petition to allow for a variance of the Motion that has been in place.

Dwayne Hogan asked if there were any other questions or concerns.

All approved. Motion carried 5-0.

Dwayne Hogan asked if there is any other business before the Board of Zoning Appeals.

Attorney Biege said that last month the Court asked me to re-draft a resolution concerning notice to make it (inaudible) towards the purpose of allowing the Board to more easily find the physical location and he did that. Attorney Biege said that they restricted simply to a requirement of an 8 and a half by 11 (8/12x11) placard. Attorney Biege said as to what is going to be listed on the placard requesting that it be posted ten days prior to the hearing. Attorney Biege said that he has an example of the resolution and placard if the Board wants to review.

Attorney Biege said that they did make some revisions to the website, but he didn't want to presume what the Board would decide tonight so he will have it ready for the Board next month depending on if the Board decides to take action on the resolution tonight.

Dwayne Hogan asked if there are any questions on this.

Attorney Biege said that this is actually a rule that will be passed by a resolution and the first resolution number would come from the secretary and he would venture to guess it would be 2014-01.

Melissa Mullins Mischke said that she will make a Motion that we adopt resolution 2014-01 for the BZA of La Porte County Board of Zoning Appeals.

Glen Minich seconded.

Dwayne Hogan asked if there are any other comments, questions, or concerns on 2014-01 resolution.

All approved. Motion carried 5-0.

Dwayne Hogan asked if there is anything else this evening.

Attorney Biege said that he will e-mail out our suggested changes to the website revisions after the Building Commissioner's approval for the Board's consideration for next month.

Dwayne Hogan asked if there are any other questions, comments, or concerns.

Wally Pritz was talking about the sign for the Red Barn for the reception hall on Johnson Road.

Attorney Biege said that he had contact with them and she sent him a response which was a legitimate reason and he can't remember the reason, but they assured him that they were going to take care of it. Sorry he doesn't remember the reason now.

Wally Pritz said that in the mean time they're going to have receptions out there and he believes that sign should be up prior to that time.

Attorney Biege said that he wants to say it was the weather – they had an issue with the electricity out there and whatever it was she assured me they would have it done as soon as the weather breaks.

Glen Minich said that it would have been extremely hard to get locations done with the snow drifts; that had to delay the whole process.

Candice Nelson told Attorney Biege that he has her name as Candice Adams on the resolution and it is now Nelson.

Attorney Biege said that he will correct that and e-mail to Dwayne if the Board gives permission to the President to sign. Attorney Biege apologized.

Dwayne Hogan asked if there are any other questions for the Board tonight.

There being no further business, meeting adjourned at 6:52 p.m.

All approved. Motion carried 5-0.

There being no further business, meeting adjourned at 6:52 p.m.

Dwayne Hogan, Chairman

Annemarie Polan, Recording Secretary

*Melissa Mullens Mischke*